

400 KAR 4:125. Wild rivers administration.

RELATES TO: KRS 146.220, 146.270, 146.290, 146.310, 146.350, 224.01-110, 224.10-440, 224.10-470, 224.10-240

STATUTORY AUTHORITY: KRS 146.270, 224.01-110, 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.270 authorizes the secretary to adopt rules and administrative regulations necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them. KRS 146.220 places emphasis on protecting the aesthetic, scenic, historical, archaeological, ecological and scientific features of these areas. This administrative regulation sets forth guidelines for the administration, management and public use of wild river corridors, including criteria for delineating existing, conforming, permitted and prohibited land uses and conditions of authorization for utility right-of-way construction. This administrative regulation shall apply to all lands and waters under state jurisdiction which are located within designated wild river boundaries as set forth in 401 KAR 4:100. Nothing herein shall be construed as superseding any requirements of other cabinet programs or of other state or federal agencies. This administrative regulation contains the substance of and repeals 401 KAR 4:120.

Section 1. Definitions. As used in this chapter, unless context otherwise requires:

(1) "Agricultural use" means the use of land for agricultural purposes including, but not limited to farming, dairying, pasturage, apiaries, horticulture, floriculture, viticulture, and animal and poultry husbandry; provided that fruit, vegetable and flower production for personal consumption shall not be deemed an agricultural use.

(2) "Buffer zone" means an area of woodland having a minimum width of not less than 100 feet which is retained along each bank of a wild river to maintain aesthetics, bank stability, appropriate water temperatures, fish and wildlife habitat, and stream hydraulics, and to filter debris and water-borne pollutants from surface run-off.

(3) "Cabinet" means the Environmental and Public Protection Cabinet.

(4) "Change of use permit" means a permit issued to a landowner by the secretary to authorize a change of land use within a wild river corridor.

(5) "Commercial service" means the use of a wild river corridor for monetary profit, including, but not limited to, concessions, boat rentals, shuttle services, guided trips or tours, commercial boat docks, wharves and other recreational facilities.

(6) "Conforming use" means a land or resource use which conforms to the provisions and intent of the Kentucky Wild Rivers Act and the management plan developed pursuant to KRS 146.270 for a given wild river corridor.

(7) "Existing use" means a land use which is in existence at the time a wild river is designated by the Kentucky General Assembly.

(8) "Floodplain" means the area in a watershed that is subject to flooding at least one (1) time in every 100 years.

(9) "Management plan" means the individual plan adopted by the cabinet pursuant to KRS 146.270 as the official document guiding the management and protection of a given wild river corridor.

(10) "Permitted use" means a nonconforming land use within a wild river corridor which has been authorized by the secretary through the issuance of a change of use permit.

(11) "Research plan" means a plan of action submitted to the cabinet for approval prior to initiating a scientific study within a given wild river corridor.

(12) "Resource removal" means exploration for, extraction or removal of a natural resource in-

cluding, but not limited to, coal, oil and gas, minerals, rock, gravel, sand and soil.

(13) "Secretary" means the Secretary of the Environmental and Public Protection Cabinet.

(14) "Selective cutting (of timber)" means the selective removal during one entry of trees from an area such that a specified minimum residual stocking level is retained and evenly distributed over the harvest area. A selective cut creates or maintains an uneven-aged stand of timber.

(15) "Structure" means an aboveground object constructed, built or installed for a change of use, and shall exclude sediment ponds, roads and signs.

(16) "Visual intrusion" means resulting in the disruption, degradation or impairment of the natural or primitive appearance of an area in a wild river corridor, as viewed from the river or other designated public use area, and includes any land use that does not remain visually subordinate to the characteristic landscape.

(17) "Wild river" or "wild river corridor" means a stream segment and adjacent shoreland within boundaries set forth in 401 KAR 4:100 which are designated in accordance with KRS 146.241.

Section 2. General Policy. (1) Wild rivers shall be managed to preserve their free-flowing condition and to protect the outstanding and unique aesthetic, scenic, recreational, fish and wildlife, botanical, historical, archaeological and other natural and cultural features which qualified the streams for designation as wild rivers.

(2) Additional management objectives shall be to afford opportunities to enjoy natural streams and to preserve for future generations the beauty of certain areas untrammelled by man. The cabinet will not encourage public use of areas where it has been determined that the carrying capacity for one (1) or more uses has been reached or exceeded.

Section 3. Management Plans. (1) The management of a given wild river corridor shall be according to a management plan developed by the cabinet.

(2) The cabinet shall consult with landowners in the affected wild river corridor, citizen groups, industries and appropriate local, state and federal agencies in the preparation of each management plan.

(3) Public participation in the development of a management plan shall be provisioned by at last one (1) public hearing on the draft management plan followed by a thirty (30) day comment period prior to finalizing the plan.

(4)(a) The hearing, or hearings, shall be conducted in one (1) of the counties through which the designated portion of the river flows;

(b) Notice of hearing shall be given in accordance with the provisions of KRS Chapter 424. The notice shall:

1. State the time, place and purpose of the hearing;
2. State the name and address of the person from whom a copy of the proposed management plan may be attained;
3. Be published not less than seven (7) nor more than twenty-one (21) days prior to the hearing;
4. Be published in the county, or counties, through which the designated portion of the river flows, and in at least one (1) major newspaper; and
5. Set forth the address to which written comments on the draft management plan may be submitted, and the date by which those written comments shall be submitted.

(c) The hearing shall be conducted by a designated representative of the cabinet who shall control the order of presentation;

(d) Any interested person may appear at the hearing and make an oral or written presentation concerning the draft management plan. All oral presentations shall be recorded; and

(e) All written and oral comments shall be considered in the development of the management

plan.

(5) Responsibility for the administration and management of a wild river shall be clearly delineated in the management plan for that river, and any management agreements between the cabinet and local, state or federal agencies having overlapping jurisdiction over lands or waters within the wild river corridor shall be incorporated into the plan.

Section 4. Existing or Conforming Land Uses. (1) Under the provisions of KRS 146.290, land uses which are lawfully existing at the time the boundaries of a wild river are designated may continue even though the use does not conform to the purpose and intent of the Kentucky Wild Rivers Act or the management plan for a given wild river.

(2) Other than existing uses, land uses within wild river corridors which conform to the purposes and intent of the Kentucky Wild Rivers Act and the duly adopted management plan for each wild river shall not require a change of use permit.

(3) Conforming uses shall include wilderness type recreation such as nonmechanized boating, hiking, hunting, fishing, camping, sightseeing and horseback riding, as well as scientific research, environmental education and related activities which preserve the primitive character and natural and cultural resources of the area.

(4) Other land uses shall qualify as conforming uses if they do not involve the clearing of more than one-half (1/2) acre of timber, nor constitute a significant visual intrusion within 100 feet of the river. Conforming uses may include the following:

(a) The routine maintenance, repair, renovation or replacement of existing roads, buildings or other structures or improvements to an existing use;

(b) The selective cutting of firewood or individual trees by a landowner for personal or family use;

(c) Landscaping and gardening, including flower, fruit and vegetable production;

(d) Fencing;

(e) The removal of noxious weeds from an area using direct application but not aerial spraying, and herbicides that are short-term, nontoxic to fish and wildlife and will not leach into surface waters or groundwater; and

(f) The clearing of diseased or insect-infested trees from an area greater than one-half (1/2) acre upon written authorization from the cabinet based on the recommendation of a professional forester.

Section 5. Permitted Land Uses. (1) Land use changes authorized by the cabinet through a change of use permit as required under KRS 146.290, shall comply with all applicable standards set forth in 401 KAR 4:140;

(2) Land use changes which require a change of use permit shall include:

(a) A resource removal, by methods other than surface mining;

(b) The selective cutting of timber as defined in Section 1 of this administrative regulation; and

(c) A new agricultural use that requires clearing of timber from an area greater than one-half (1/2) acre or more in extent.

Section 6. Prohibited Land Uses. (1) Pursuant to KRS 146.290, surface mining, timber harvest by methods other than selective cutting and in-stream disturbances are prohibited within a wild river corridor;

(2) Prohibited in-stream disturbances shall include but not be limited to, dam construction, dredging, spoil or fill deposition, channel diversion, channelization and mining of streambed materials; and

(3) The construction of roads, buildings or other structures to effect any use other than an exist-

ing or permitted land use, as set forth in Section 4 or 5 of this administrative regulation, is prohibited.

Section 7. Public Use. (1) Public use of wild river corridors shall be limited to the public waters and public lands or interests in lands acquired through lease, easement or other agreement entered into by the landowner. Public use of private property shall require permission from the landowner. Trespassing is subject to penalty as set forth in KRS 146.990. This section applies to the public use of state-owned lands and public waters within wild river corridors.

(2) The cabinet will make every effort to inform the public that the wild river designation does not authorize public use of privately-owned lands, and will prepare maps delineating the boundaries of public lands within wild river corridors to reduce unintentional trespassing.

(3) In accordance with KRS 146.290, transportation shall be by foot, canoe, kayak, boat, with or without electric motor, horseback or other nonmechanized means except on existing public roads, as required for administrative and resource protection purposes, or as necessary to effect an existing or permitted land use.

(4) The cabinet may condition or deny public access to a wild river if such use is causing substantial adverse impact on the scenic, aesthetic, natural, cultural, scientific or recreational resources, if private property is being damaged, or if user safety is being jeopardized.

(5) Cultural artifacts, relics, fossils and souvenirs shall not be removed from their site of discovery in a wild river corridor. Deliberate damage to plants, animals, artifacts or other special features is prohibited. A written request shall be submitted to and approved by the division prior to the collection of any natural or cultural materials.

(6) Burying, dumping or depositing litter, soil, garbage, waste, scrap or other unsightly or offensive materials other than in receptacles provided for this purpose is prohibited.

(7) Horseback riding shall be allowed only on trails specifically designated for this use.

(8) Overnight camping and campfires shall be prohibited within thirty (30) feet of a wild river. No open fire shall be left unattended, and all fires shall be completely extinguished after use. Live vegetation shall not be cut for firewood.

(9) Camping within a state park shall be in accordance with 304 KAR 1:040.

(10) Hunting, fishing and trapping shall be subject to state and federal fish and wildlife laws and regulations, and shall comply with the following conditions:

(a) The construction of permanent shelters, lean-tos or other buildings is prohibited. Temporary blinds, stands or other structures shall be erected in a manner that will prevent injury to trees; and

(b) Trapping is prohibited within fifty (50) feet of designated boat access sites, boat portage trails and other designated public hiking trails, picnic areas and campgrounds.

(11) Carrying or discharging a firearm, bow and arrow or explosive substances shall be prohibited for any purpose other than hunting in accordance with state wildlife laws and the other provisions of this administrative regulation.

(12) Swimming and other in-stream recreational uses of a wild river shall be in accordance with Division of Water Patrol safety standards (402 KAR 4:080 and 4:130). Entering a wild river from the shores of a state park for swimming, bathing or other in-stream recreational use shall be allowed only in areas designated as swimming areas by the Department of Parks.

(13) Conduct which disturbs the peace or causes property damage within a corridor is prohibited.

(14) Public users of wild rivers are encouraged to leave in passing no mark upon the land that might diminish its value to another, and to make every effort to protect and enhance the unspoiled beauty of these areas as components of Kentucky's unique heritage.

Section 8. Enhancement of Recreational Opportunities. (1) The development of public access

to a wild river will be compatible with the purposes and intent of KRS 146.200 to 146.360 and the duly adopted management plan for a given river, and shall conform to the natural character of the area.

(2) Development of public access may be used to enhance dispersed, nonmechanized recreational opportunities and provide information on safety, orientation, rules and administrative regulations and interpretation of special features in the area.

(3) Trails constructed within a wild river corridor will be designed and maintained to provide for nonmechanized recreational uses and to prevent soil erosion and compaction, trampling of vegetation, and other damage to the natural beauty and resources of the area.

(4) There shall be no cutting or removal of natural vegetation, living or dead, to create scenic vistas, except as expressly provided by law.

Section 9. Commercial Uses. (1) The operator of a new commercial service within a wild river corridor shall submit written notification to the cabinet not less than thirty (30) days prior to commencing such use.

(2) The construction of access roads, ramps, wharves or boat docks, buildings or other facilities required to effect a commercial use shall be located outside of a wild river corridor unless authorized by a change of use permit.

(3) The operator of a commercial service on a wild river shall comply with all applicable provisions of this administrative regulation, and shall be responsible for ensuring that the commercial use does not impair or contribute to an adverse impact on the aesthetic, scenic, ecological, scientific, recreational or other significant features in the corridor as identified in the management plan or by the cabinet, or cause substantial damage to soils, vegetation, fish and wildlife or water quality.

(4) The cabinet may condition or deny commercial use of a wild river, as provided in Section 7(4) of this administrative regulation.

(5) In accordance with 304 KAR 1:030, operation of a commercial activity within a state park requires prior written consent from the Department of Parks.

(6) Commercial harvest of mussels by any method is prohibited in areas where mussel species considered endangered or threatened by the Kentucky Academy of Science are known to occur.

Section 10. Scientific Study. (1) A research plan shall be submitted to the cabinet for approval prior to the commencement of any scientific study that may affect a wild river corridor.

(2) A research plan submitted to the cabinet on a form supplied by the cabinet shall contain the following information:

(a) The name, address, telephone number, professional affiliations and qualifications of the principal investigator;

(b) A U.S. geological survey 7.5 minute topographic map delineating the location and extent of the study area;

(c) The estimated dates of initiation and completion of the study;

(d) The objectives, methods and significance of the study and a statement as to the necessity or advantages of conducting the study within the wild river corridor;

(e) Plant or animal species or any special features which may be affected by the study, and the type and extent of any such effects; and

(f) A list of any plants, animals or other resources or materials to be collected, the estimated quantity to be collected, and the permit numbers of collection permits obtained from state and federal agencies.

Section 11. Utility Right-of-way Construction. (1) As set forth in KRS 146.290, the construction

of a transmission line or pipeline right-of-way within any portion of a wild river corridor shall require written approval from the secretary prior to the initiation of any construction activities within the wild river boundaries.

(2) Authorization to construct a right-of-way shall require application by the owner of the utility or pipeline company or their engineering representatives, on an application form supplied by the cabinet. The application shall include a land use plan containing the following information:

(a) A U.S. geological survey topographic map to scale not greater than one (1) inch equal to 500 feet, showing the precise route and dimensions of the right-of-way;

(b) The estimated dates for initiation and completion of construction and the name, address and telephone number of the person or persons in charge of the construction;

(c) A detailed description of the methods of construction and specifications, including profile sheets bearing the seal and signature of a registered professional engineer;

(d) A statement of possible alternate routes for the right-of-way and why the proposed route was selected;

(e) A detailed reclamation plan designed to return the disturbed area as nearly as possible to its former appearance and condition, including the use of native species to revegetate disturbed areas; and

(f) A detailed description of proposed methods for maintaining the right-of-way, including the brand names and methods of application of any herbicides to be used.

(3) Upon receipt of an application, an inspection of the proposed construction site will be made by cabinet personnel with the property owner and applicant or their representatives, and personnel from appropriate state and federal agencies.

(4) The secretary shall notify the applicant as to whether the application is approved or denied within sixty (60) days following receipt of the application, and will state the reasons for the decision.

(5) If an application is denied, the applicant may submit a revised application to adequately address the reasons for denial stated in the secretary's written decision.

(6) An application will be approved only if there is no possible alternative route for the right-of-way that would bypass or cause less impact to the wild river corridor, and the applicant agrees to restore all disturbed area within the wild river corridor as nearly as possible to its former appearance and condition, as required under KRS 146.290.

(7) Authorization to construct a right-of-way shall contain, but not be limited to, the following conditions:

(a) Wherever feasible, the right-of-way shall be routed to avoid steep slopes, erodible soils, surface waters and areas with high water tables, public recreation areas, and other significant natural and cultural areas identified by the cabinet, and shall be the minimum width necessary for construction and maintenance;

(b) Adequate measures shall be taken to control sediment and any hazardous substances, and to minimize the visual impact of the right-of-way when viewed from the wild river or other designated public use areas;

(c) Any timber cutting required shall be according to the provisions of 401 KAR 4:140, Sections 4 through 7, and 9 through 14 and Section 17(10) through (21);

(d) Every effort shall be made to minimize disturbance to the streambed, stream banks and fish and wildlife habitat during construction activities, and to keep timber slash and other debris out of surface waters and the immediate floodplain;

(e) Stream crossings by equipment or vehicles in a wild river corridor shall require the use of a temporary bridge or other methods approved by the cabinet and be designed so as not to impede stream flow. Construction across surface waters shall occur when local fish and wildlife are not spawning or nesting;

- (f) Vehicles and equipment shall be stored outside of the wild river corridor when not in use;
- (g) Aerial spraying of herbicides shall not be permitted within the boundaries of a wild river. Direct application of herbicides at ground level shall be limited to brands that are nontoxic to fish and wildlife;
- (h) Pipeline relief valves shall be located outside of the wild river corridors;
- (i) Primary consideration shall be given to underground placement of transmission lines and pipelines. Overhead transmission lines and towers shall be in accordance with environmental guidelines required by the Rural Electrification Authority, and shall be designed so as to prevent electrocution or other injury to wildlife;
- (j) Reclamation shall consist of establishing a permanent vegetative cover on all disturbed surfaces, planting native trees or shrubs where necessary to establish a buffer zone along the banks of the wild river, implementing measures to prevent access by off-road vehicles, and removing all evidence of construction activities;
- (k) A performance bond, in an amount to be determined by the cabinet, shall be required for reclamation if the cabinet determines that the proposed construction may potentially damage, degrade or otherwise have an adverse impact on any significant feature known to occur within the wild river corridor.
- (l) The applicant shall provide written notice to the cabinet upon completion of reclamation, and cabinet personnel will inspect the construction site to verify compliance with all permit conditions before the bond is released.

Section 12. Road Construction. (1) In accordance with KRS 146.290, new permanent roads shall not be constructed within a wild river corridor except as authorized by the secretary to enhance recreational opportunities or to protect soil, water or other natural resources.

(2) Temporary roads shall be constructed within a wild river corridor only as necessary to effect a use authorized by a change of use permit, and shall be closed and reclaimed immediately after the permitted land use is concluded.

(3) Any construction required to improve, repair or replace existing state or county-maintained roads or bridges shall require full environmental review by the division and other appropriate state natural resource agencies prior to any construction activity.

(4) During authorized construction activities, no heavy equipment shall be driven through or into a wild river unless every feasible precaution has been taken by the operator to prevent damage to stream-bank vegetation, protect fish and wildlife habitat, control soil erosion and prevent stream sedimentation.

(5) When recommended by the secretary, design plans for improving or replacing a bridge across a wild river shall consider provisions for enhancing public access to the river for recreational uses consistent with the provisions of KRS 146.200 to 146.360.

Section 13. Agency Notification. (1) State or local government agencies which engage in or regulate any activity within the watershed of a wild river shall notify the cabinet prior to the initiation of any activity which may adversely affect the river, and shall provide the cabinet an opportunity to review proposals and plans for the new activity.

(2) A change of land use on state-owned lands within a wild river corridor that does not conform with the purpose and intent of KRS 146.200 to 146.360 shall require that the state agency that owns the affected land obtain a change of use permit from the cabinet.

Section 14. Fire Control. (1) State fire control provisions of KRS Chapter 149, and any which may be established by cooperative agreement, shall be strictly enforced.

(2) Fire shall be controlled by methods that require the least disturbance to soils and vegeta-

tion, and use of heavy equipment shall be limited to situations where an eminent threat to life or personal property exists. Any fire hazard reduction or replanting after fire shall be coordinated with the division.

Section 15. Signs. (1) The posting of commercial signs, advertisements, announcements, campaign slogans or other written messages other than those related to permitted uses shall be prohibited.

(2) As otherwise allowed by law, signs may be installed by the management agency, local government, landowner or public utility for the purpose of public safety, posting of property boundaries or property protection, identification of river corridor boundaries and public access points or as otherwise deemed necessary for resource protection, interpretation or regulatory purposes.

(3) Signs shall be of a design and construction conforming to the natural setting in which they are located, and shall not exceed sixteen (16) square feet in size.

(4) Any person with the permission of the landowner may post informational and directional signs within a corridor as are necessary to the continuance of an existing use.

Section 16. Enforcement and Hearings. (1) Whenever the cabinet has reason to believe a violation of 401 KAR Chapter 4 has occurred, a notice of violation shall be issued.

(2) The provisions of KRS 224.10-420 shall apply to any cabinet order or determination made pursuant to the provisions of 401 KAR Chapter 4.

(3) Hearings required to be conducted due to the issuance of a notice of violation issued pursuant to subsection (1) or the filing of a petition pursuant to subsection (2) of this section shall be conducted pursuant to KRS 224.10-440.

(4) Appeals may be taken from any final order of the cabinet pursuant to KRS 224.10-470.

(5) Violations of the provisions of 401 KAR Chapter 4 shall be liable to the civil penalty set forth in KRS 146.990(1).

(6) Orders for remedial action and recovery of penalties will be sought pursuant to KRS 146.350.

Section 17. Severability. In the event that any provision of KRS 146.200 to 146.360 or any administrative regulation promulgated pursuant hereto is found to be invalid by a court of competent jurisdiction, the remaining wild rivers regulations shall not be affected or diminished thereby. (16 Ky.R. 503; Am. 1336; eff. 11-22-1989; Recodified from 401 KAR 4:125, 12-21-2017.)